REMARKS

Claims 1-60 remain in the application with claims 1, 14, 28, 43, and 59 being in independent form.

The Examiner rejected claims 1-56 under 35 U.S.C. §103 (a) based on Davis et al. (US 6,172,164). The Examiner incorrectly begins the analysis in paragraph 3 by stating: "Phosphorous compound is considered of being a non-reactive compound that can be present in any amount in any step in a process for producing a preformed stabilizer." The claims do not have this language. Specifically, independent claims 1 and 14 are directed to formation of a preformed stabilizer and require "wherein the macromer and the monomer are polymerized in the presence of at least one free radical initiator, a carrier polyol, and at least one phosphorous compound". Independent claim 28 is directed to a final graft polyol and requires "wherein the macromer and the monomer are polymerized in the presence of at least one free radical initiator, a carrier polyol, and at least one phosphorous compound". Independent claim 43 is directed to formation of a final graft polyol and requires "polymerizing the macromer and the monomer in the presence of at least one free radical initiator, a carrier polyol, and at least one phosphorous compound". Thus, all of the rejected claims require the phosphorous compound be present during polymerization of the macromer and the monomer in the presence of free radical initiator and a carrier polyol. It is this unique reaction environment that is the present invention. In addition, dependent claims 10-13, 23-26, 37-40, and 52-55 require specific amounts of phosphorous compound.

Rejection of a claim under 35 U.S.C. §103 based on a single reference requires that the Examiner point to a specific teaching, suggestion, or motivation in the reference itself that

would lead one of ordinary skill in the art to modify the reference to arrive at applicants' invention. The Examiner can not use applicants' own disclosure as a blueprint in a hindsight manner. . *In re Sang Su Lee*, 277 F.3d 1338 ; 61 USPQ 2nd. 1430 (Fed. Cir. 2002), citing *Brown & Williamson Tobacco Corp, v. Phillip Morris, Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000); *In re Napier*, 34 U.S.P.Q. 2d 1782 (Fed. Cir. 1995).

In the present rejection the Examiner points to Davis et al. as disclosing a process for formation of a graft polyol dispersion, which applicants agree it does show. Then, the Examiner points to column 11, lines 49-60 of Davis et al. which discloses use of phosphate compounds as fire retardants in polyurethane foams and says therefore it would be obvious to use a phosphate compound during formation of the graft polyol. The Examiner is directed to Davis et al. column 10, lines 5-12 wherein Davis et al. discloses the process for formation of a polyurethane foam using the disclosed graft polyols. Here it is stated : "The polyurethane foams employed in the present invention are generally prepared by the reaction of a graft polymer dispersion with an organic polyisocyanate in the presence of a blowing agent and optionally in the presence of additional polyhydroxyl-containing components, chain-extending agents, catalysts, surface-active agents, stabilizers, dyes, fillers and pigments." In the present claims the phosphorous compound is used in the reaction for formation of the preformed stabilizer or the graft polyol which requires polymerizing a macromer and the monomer in the presence of at least one free radical initiator, a carrier polyol and the phosphorous compound. There is nothing with Davis et al. that would suggest any benefit to including a phosphorous compound in the formation reaction for a preformed stabilizer or a final graft polyol as required by the present invention. Davis et al. described use of phosphorous compounds in foams as flame

retardants. Davis et al. never suggests they can be use in the reactions leading to formation of graft polyols or any other polyols. In Davis et al. the graft polyol has already been formed before the flame retardants are added to the foam forming reactants. Because independent claims 1, 14, 28, and 43 include limitations neither found in nor made obvious by the reference the rejection of these claims and those which depend from them based on the cited reference is improper and must be withdrawn.

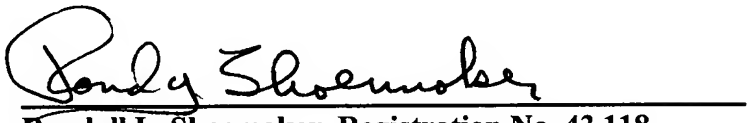
The Examiner also rejected claims 57-60 under 35 U.S.C. §103 based on Davis et al. in view of Huang et al. Huang et al. discloses formation of graft polyols using preformed intermediate graft polyols similar to a preformed stabilizer of the present invention with the exception that Huang et al. does not disclose use of a phosphorous compound during the polymerization reaction. Claim 57 depends from claim 43 and requires that the polymerization step of the macromer and monomer is done in the presence of at least one free radical initiator, a carrier polyol, a phosphorous compound and a preformed stabilizer. Claim 58 adds that the preformed stabilizer is formed in the presence of a phosphorous compound. Independent claim 59 is directed to a method for formation of a graft polyol that requires : a) providing a preformed stabilizer as recited in claim 1; b) providing at least one ethylenically unsaturated monomer; and c) polymerizing the preformed stabilizer and the monomer in the presence of at least one free radical initiator, a carrier polyol, and at least one phosphorous compound. Huang et al. either alone or in combination with Davis et al. fails to disclose or make obvious any of these processes. As noted above Davis et al. provides no suggestion for use of phosphorous compounds in any reaction other than in a foam forming reaction and Huang et al. fails to correct this deficiency. Because the rejected claims all include limitations not found in nor

made obvious based on Davis et al. in combination with Huang et al. the rejection of these claims is improper and should be withdrawn.

Applicants' attorney respectfully submits that the claims as amended are now in condition for allowance and respectfully requests such allowance.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS



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Date

Randall L. Shoemaker, Registration No. 43,118
Howard and Howard Attorneys, P.C.
The Pinehurst Office Center, Suite 101
39400 Woodward Ave.
Bloomfield Hills, MI 48304-5151
(248) 723-0425

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Amy C. Grubb

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